

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 U.S. MAGISTRATE JUDGE
4 EL PASO DIVISION

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7 UNITED STATES OF AMERICA) No. EP:24-CR-1370
8 vs.) El Paso, Texas
9 YOHANGEL JAVIER)
10 MARTINEZ-GONZALEZ) June 12, 2024

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12 -----
13 PRELIMINARY/DETENTION HEARING
14 Before the Honorable Miguel Torres
15 United States Magistrate Judge
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A P P E A R A N C E S

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1 THE COURT: The Court calls EP:24-M-2316, the United
2 States of America versus Yohangel Javier Martinez-Gonzalez.
3 Announcements, please.

4 MS. WAGMAN-ROMERO: Shane Wagman-Romero on behalf of
5 the United States, ready.

6 MR. RASMUSSEN: Good morning, Your Honor. Damian
7 Rasmussen on behalf of Yohangel Javier Martinez-Gonzalez, ready
8 as well.

9 THE COURT: Good morning.

10 We are proceeding on both, Mr. Rasmussen?

11 MR. RASMUSSEN: Yes, Your Honor.

12 THE COURT: Pursuant to the Due Process Protections
13 Act, the Government is put on notice as to its disclosure
14 obligations under the Supreme Court precedent of Brady versus
15 Maryland.

16 The failure to comply with those obligations on the part of
17 the Government could result in sanctions on the Government. A
18 written notice to this effect will follow this hearing.

19 Go ahead and call your first witness, please.

20 MS. WAGMAN-ROMERO: Thank you, Your Honor. The
21 Government calls Matthew Miller.

22 THE COURT: Do you swear to tell the truth, the whole
23 truth and nothing but the truth, so help you God?

24 AGENT MILLER: I do, Your Honor.

25 THE COURT: Have a seat.

1 You may proceed.

2 MS. WAGMAN-ROMERO: Thank you, Your Honor.

3 Sir, would you please state your name for the record?

4 AGENT MILLER: Matthew Miller.

5 MS. WAGMAN-ROMERO: How are you employed?

6 AGENT MILLER: United States Border Patrol agent.

7 MS. WAGMAN-ROMERO: As a United States Border Patrol
8 agent, is it part of your duties to investigate allegations of
9 violations of Title 8, United States Code, 1324, Alien
10 Smuggling?

11 AGENT MILLER: Yes, ma'am, it is.

12 MS. WAGMAN-ROMERO: Are you aware of such an alleged
13 violation against an individual named Yohangel Javier
14 Martinez-Gonzalez?

15 AGENT MILLER: Yes, ma'am.

16 MS. WAGMAN-ROMERO: If you were to see Mr. Martinez,
17 would you be able to recognize him?

18 AGENT MILLER: Yes, ma'am.

19 MS. WAGMAN-ROMERO: Do you see him in the courtroom
20 today?

21 AGENT MILLER: I do.

22 MS. WAGMAN-ROMERO: Would you please describe him for
23 the record?

24 AGENT MILLER: He is sitting next to Mr. Rasmussen at
25 Defense table No. 2. He is wearing an orange jumpsuit with an

1 interpreter headset.

2 MS. WAGMAN-ROMERO: May the record reflect the witness
3 identified the Defendant, Your Honor?

4 THE COURT: The record will so reflect.

5 MS. WAGMAN-ROMERO: Thank you.

6 Let me take this to the inception of the investigation
7 involving Mr. Martinez.

8 Did Border Patrol agents with the Ysleta Border Patrol
9 Station obtain information about a residence in Socorro, Texas?

10 AGENT MILLER: Yes, ma'am, they did. As a result of a
11 previous alien smuggling event.

12 MS. WAGMAN-ROMERO: Is Socorro, Texas, in the Western
13 District of Texas?

14 AGENT MILLER: Yes, ma'am, it is.

15 MS. WAGMAN-ROMERO: Did agents go to the residence in
16 Socorro and conduct surveillance?

17 AGENT MILLER: They did.

18 MS. WAGMAN-ROMERO: What date did they do that?

19 AGENT MILLER: I believe it was May [unintelligible]
20 of May 6, and they conducted surveillance on the same day as
21 the event, as this event.

22 MS. WAGMAN-ROMERO: Would you need to look at the
23 criminal complaint to refresh your recollection to see what
24 date?

25 AGENT MILLER: I don't know the specific dates of the

1 investigation. It evolved.

2 MS. WAGMAN-ROMERO: Your Honor, may I approach the
3 witness with the criminal complaint?

4 THE COURT: You may.

5 AGENT MILLER: Just to clarify, are you referring to
6 the investigation of the alien smuggling event we are here for
7 today or previous alien smuggling events and investigations on
8 the residence? I am unclear.

9 MS. WAGMAN-ROMERO: I see. Sorry, thank you for
10 asking me to clarify.

11 My question was, did Border Patrol agents surveil the house
12 in Socorro, Texas, and, if so, on what date?

13 AGENT MILLER: On the date of the event, June 6.

14 MS. WAGMAN-ROMERO: Thank you.

15 On that date, did they notice anything at the house in
16 Socorro, Texas, which caught their attention?

17 AGENT MILLER: They did. They observed multiple
18 vehicles coming to the residence and multiple individuals
19 exiting those vehicles and entering the residence.

20 MS. WAGMAN-ROMERO: As a result of their observations,
21 what did they decide to do?

22 AGENT MILLER: They ran records checks on those
23 vehicles, and those vehicles did come back to -- tied to alien
24 smuggling events, as well as narcotics smuggling as well.

25 MS. WAGMAN-ROMERO: Were any of these vehicles in the

1 name of the Defendant that you recall?

2 AGENT MILLER: Rephrase the question, please.

3 MS. WAGMAN-ROMERO: Were any of the vehicles in the
4 name of the Defendant?

5 AGENT MILLER: No, ma'am.

6 MS. WAGMAN-ROMERO: Did agents on that day ever
7 approach the residence?

8 AGENT MILLER: They did.

9 MS. WAGMAN-ROMERO: Can you tell the Court about the
10 facts surrounding that approach?

11 AGENT MILLER: Agents decided to approach the
12 residence and pose as a delivery driver who was, in fact,
13 dropping off illegal aliens.

14 MS. WAGMAN-ROMERO: They knocked on the door, correct?

15 AGENT MILLER: Correct.

16 MS. WAGMAN-ROMERO: Someone opened the door, correct?

17 AGENT MILLER: No, ma'am.

18 MS. WAGMAN-ROMERO: What happened?

19 AGENT MILLER: The report states that they were
20 speaking with an individual, later identified as the Defendant,
21 through a metal screen door.

22 MS. WAGMAN-ROMERO: They were speaking with an
23 individual, identified as the Defendant, through a metal screen
24 door.

25 What was that conversation like?

1 AGENT MILLER: The agents still posing as a delivery
2 driver and an illegal alien asked the Defendant if -- they
3 actually stated and asked the Defendant if -- I got to remember
4 the exact conversation.

5 Your Honor, can I refer to my notes real quick?

6 THE COURT: You may.

7 AGENT MILLER: I don't want to misspeak. They
8 informed the Defendant that they were there to drop off what is
9 known as a [unintelligible]. It is a term commonly used by
10 alien smuggling organizations to refer to illegal aliens.

11 The Defendant replied [unintelligible] what is the code.
12 This is another tactic used by alien smuggling organizations
13 when conducting transactions. Sometimes over the phone they
14 require a code or a password to verify that they are, in fact,
15 conducting the illegal activities.

16 At that time, the Defendant said I don't know who you are,
17 and he got on his telephone to verify. It appeared to the
18 agents he conducted a phone call to verify the validity of what
19 they were doing.

20 MS. WAGMAN-ROMERO: At any point, did an agent ask the
21 Defendant if this was the stash house?

22 AGENT MILLER: Yes, they did. The agents did, in
23 fact, ask the Defendant if this was the stash house. His reply
24 was yes, it is, and I don't know who you are.

25 MS. WAGMAN-ROMERO: You mentioned that the Defendant

1 issued a phone call?

2 AGENT MILLER: Yes, ma'am.

3 MS. WAGMAN-ROMERO: What happened after that?

4 AGENT MILLER: Agents at that time were still speaking
5 through the screen door and asking the Defendant if they could
6 drop off, if he can let the agents still posing as the illegal
7 aliens inside the house. At that time, the Defendant agreed.
8 He said yes, that guy can stay, but I still don't know who you
9 are.

10 At that time, the agents believing that the Defendant was,
11 in fact, the caretaker of the residence, they proceeded to
12 identify themselves as Border Patrol agents and attempted to
13 effect an arrest, at which time the Defendant very hurriedly,
14 the report says hurriedly, walked away from the door and exited
15 out of their view towards the rear of the residence. He
16 approached an open window and attempted to exit the open window
17 from the house.

18 There were other agents nearby in the area. It appeared to
19 them he noticed they were there, and he decided to return to
20 the front of the house, at which time the agents then asked for
21 consent to enter and search the residence.

22 MS. WAGMAN-ROMERO: Did they receive that consent?

23 AGENT MILLER: They did. The Defendant then stepped
24 outside the house, and agents entered and encountered a total
25 of 17 individuals that were determined to be illegal aliens.

1 MS. WAGMAN-ROMERO: How were they determined to be
2 illegal aliens?

3 AGENT MILLER: They questioned them as to their
4 citizenship, and I believe they were citizens of either
5 Guatemala and Mexico.

6 THE COURT: Agent, do me a favor and back off a little
7 bit off the microphone. Thank you.

8 AGENT MILLER: Sorry, Your Honor.

9 THE COURT: That's all right.

10 MS. WAGMAN-ROMERO: Could you describe the house for
11 the Court?

12 AGENT MILLER: When agents entered the residence, they
13 noted the house seemed very warm. It smelled to them of heavy
14 body odor. The living conditions to them did not appear to be
15 very hospitable.

16 MS. WAGMAN-ROMERO: At this point, was Defendant
17 questioned as to his citizenship?

18 AGENT MILLER: Yes.

19 MS. WAGMAN-ROMERO: Was he determined to be a citizen
20 of Venezuela?

21 AGENT MILLER: He was.

22 MS. WAGMAN-ROMERO: Was he determined to be illegally
23 -- I will leave it at that.

24 Did agents find any [unintelligible] or phones inside the
25 residence?

1 AGENT MILLER: Yes. They saw a large number of cell
2 phones, and during the process of removing the illegal aliens
3 from the house, it is common practice to ask if they have any
4 property. The illegal aliens began to identify those cell
5 phones as being their own.

6 MS. WAGMAN-ROMERO: Can you describe how the cell
7 phones were [unintelligible] together or scattered throughout
8 the house?

9 AGENT MILLER: Yes. The agents said they located a
10 large number of cell phones together inside the living room,
11 and there were two other cell phones that were separate that
12 were [unintelligible] on top of a shoe box.

13 It may be noted that when the agents encountered the
14 Defendant, he was on his cell phone and exited out of the view
15 towards the rear of the house, and when he came back to the
16 front, he no longer had that cell phone with him. They were
17 able to identify that with -- the report states they noticed
18 his particular cell phone he was using had a sticker on the
19 case, or on the phone.

20 MS. WAGMAN-ROMERO: Did agents attempt to determine
21 who had ownership of that phone with the sticker?

22 AGENT MILLER: I don't know.

23 MS. WAGMAN-ROMERO: Well --

24 AGENT MILLER: Go ahead.

25 MS. WAGMAN-ROMERO: Did agents question any aliens

1 about their -- interview any aliens who claimed the phone?

2 AGENT MILLER: Yes, ma'am. Those two separate cell
3 phones, when they questioned again, the illegal aliens -- one
4 particular illegal alien identified one phone that was separate
5 from the large group of cell phones as being his own.

6 MS. WAGMAN-ROMERO: He was questioned by agents?

7 AGENT MILLER: Yes, ma'am.

8 MS. WAGMAN-ROMERO: [unintelligible]. Can you tell
9 the Court what this alien said, if anything, about the
10 Defendant here today?

11 AGENT MILLER: The illegal alien that claimed
12 ownership of the phone that was found with the Defendant's cell
13 phone stated that the smuggler asked him to use his cell phone.

14 When questioned by agents as to who was the smuggler he was
15 referring to, he said [unintelligible]. He pointed out the
16 Defendant.

17 MS. WAGMAN-ROMERO: Okay.

18 AGENT MILLER: Agents then asked and were granted
19 consent to search and view the illegal alien's cell phone.

20 MS. WAGMAN-ROMERO: I will get to that. I just want
21 to talk about statements he made about the Defendant.

22 Was he shown a six pack of the Defendant?

23 AGENT MILLER: He was, ma'am.

24 MS. WAGMAN-ROMERO: Did he identify the Defendant in
25 the six pack?

1 AGENT MILLER: In subsequent investigation and post
2 Miranda with the illegal alien, he was, in fact, shown a six
3 pack of the Defendant's picture, and he did identify him as the
4 person in charge of the stash house.

5 MS. WAGMAN-ROMERO: Did this alien say anything about
6 his interactions with the Defendant or instructions by the
7 Defendant while he was at the stash house?

8 AGENT MILLER: Yes. He indicated that the Defendant
9 had told everybody who was inside the room that he was being
10 held in that they were to stay there and not exit the room at
11 all.

12 MS. WAGMAN-ROMERO: Were they told to stay quiet, as
13 well?

14 AGENT MILLER: Yes, ma'am.

15 MS. WAGMAN-ROMERO: He identified the Defendant as the
16 caretaker of the home; is that correct?

17 AGENT MILLER: Correct.

18 MS. WAGMAN-ROMERO: You mentioned a phone, this
19 alien's phone.

20 Did this alien give consent to search this phone?

21 AGENT MILLER: At the time of arrest, yes, he did.

22 MS. WAGMAN-ROMERO: Did agents view content inside
23 this phone?

24 AGENT MILLER: They did.

25 MS. WAGMAN-ROMERO: Can you describe any relevant

1 content for the Court?

2 AGENT MILLER: Yes. In reviewing the illegal alien's
3 phone, the illegal alien indicated that A; it was the Defendant
4 who asked him to use it, and when they searched
5 [unintelligible] examination, they discovered messages from a
6 contact with the name of El 007 or I think there was another
7 message that stated [unintelligible] which the Defendant's
8 middle name is Javier. The illegal alien indicated those
9 messages were initiated by the Defendant on his cell phone.

10 MS. WAGMAN-ROMERO: Did those messages -- what were
11 they about?

12 AGENT MILLER: They were pertaining to alien
13 smuggling.

14 MS. WAGMAN-ROMERO: Were any other aliens at the stash
15 house interviewed?

16 AGENT MILLER: I don't know.

17 MS. WAGMAN-ROMERO: I previously asked you about the
18 state of the house.

19 It is correct there were no signs of mistreatment of the
20 aliens; is that correct?

21 AGENT MILLER: That is correct.

22 MS. WAGMAN-ROMERO: I want to ask you very briefly
23 about the Defendant's immigration status here.

24 Did you conduct records checks on the Defendant?

25 AGENT MILLER: Yes, ma'am.

1 MS. WAGMAN-ROMERO: And do those records checks reveal
2 that he is legally present or illegally present in the United
3 States?

4 AGENT MILLER: He does not have any immigration status
5 to be in the United States. He currently is under an asylum
6 proceeding, at which time I don't know the exact date of his
7 asylum hearing.

8 MS. WAGMAN-ROMERO: He has a pending hearing?

9 AGENT MILLER: Yes.

10 THE COURT: What does that mean? He is here illegally
11 or is not illegally? When somebody comes across and they have
12 an asylum hearing, they don't have status, but they are legally
13 admitted into the United States or they are -- let me rephrase
14 that.

15 They are legally present in the United States?

16 AGENT MILLER: When I searched his records, I could
17 not find how he was -- I think he applied -- sorry, he did
18 apply for asylum in the State of New York, and it was such a
19 recent time that the databases have not been updated. I don't
20 know how those proceedings were [unintelligible].

21 THE COURT: Do you know for a fact he has an asylum
22 date pending?

23 AGENT MILLER: I do. I don't know what the exact date
24 is.

25 THE COURT: Does the fact he has an asylum date

1 pending give him the right to be present in the United States,
2 although it is a weird kind of legal limbo where it is not
3 status but he is here legally present because he has a pending
4 asylum date?

5 AGENT MILLER: That is correct. Immigration officials
6 have no legal right to detain him at the current level of his
7 asylum proceedings.

8 THE COURT: Those remain pending?

9 AGENT MILLER: Yes, sir.

10 THE COURT: Sorry, go ahead.

11 MS. WAGMAN-ROMERO: I did want to clarify. I think
12 Your Honor did clarify that, and thank you.

13 If he were to be released, he would remain in the United
14 States, correct, or he would not be deported, I guess, is the
15 question, or do you know whether or not he would be able to
16 remain in the United States without being deported if he were
17 to be released?

18 AGENT MILLER: Right now, the executive office of
19 immigration review is going to be notified of his criminal
20 proceedings in this particular case. He would be -- if he
21 doesn't already have a date, a date would be set to try and get
22 him to see an immigration judge as quickly as possible to rule
23 on his asylum so that it runs ahead of the criminal
24 proceedings.

25 MS. WAGMAN-ROMERO: I want to ask you a little bit

1 about his criminal history.

2 Does he have any criminal history?

3 AGENT MILLER: He does.

4 MS. WAGMAN-ROMERO: What is that criminal history?

5 AGENT MILLER: I don't know the exact dates. I
6 believe he has a larceny or theft charge and a felony evading
7 out of Hudspeth County, Texas, in March of this year.

8 MS. WAGMAN-ROMERO: Would the evading arrest, is that
9 case still pending?

10 AGENT MILLER: Yes, ma'am, it is.

11 MS. WAGMAN-ROMERO: Are you aware of any facts of that
12 case or allegation of facts in that case?

13 MR. RASMUSSEN: I'll object to that as to relevance.

14 THE COURT: Overruled. Go ahead.

15 AGENT MILLER: I have viewed a Border Patrol report
16 concerning the facts of that case, yes.

17 MS. WAGMAN-ROMERO: What are the alleged facts in that
18 case?

19 AGENT MILLER: The report indicated that the Defendant
20 was with another individual who, at the end of the event, was
21 determined to be an illegal alien. It was the Defendant and an
22 illegal alien. They were inside a vehicle that rolled over
23 while fleeing from Border Patrol, and the Defendant and the
24 illegal alien absconded from the scene. They were later found
25 in the desert, and the Defendant was charged with felony

1 evading by state authorities.

2 MS. WAGMAN-ROMERO: Pass the witness, Your Honor.

3 THE COURT: Mr. Rasmussen?

4 MR. RASMUSSEN: Thank you, Judge.

5 Good morning, Agent.

6 AGENT MILLER: Good morning, sir.

7 MR. RASMUSSEN: You initially testified that an
8 investigation specifically referencing surveillance occurred on
9 May 6 at this residence?

10 AGENT MILLER: Your Honor, can I verify that date? I
11 believe I did testify to that. I just don't remember.

12 THE COURT: You okay with that?

13 Go ahead and check.

14 AGENT MILLER: Thank you.

15 THE COURT: The question is whether there was May 6
16 surveillance, in May?

17 AGENT MILLER: Yes, Your Honor.

18 THE COURT: This incident occurring on June 6,
19 correct?

20 AGENT MILLER: Yes, Your Honor.

21 THE COURT: Okay, thank you.

22 AGENT MILLER: I have several reports. May 9 is when
23 Border Patrol agents developed the address from a prior alien
24 smuggling scheme. They developed information pertaining to
25 this address on numerous dates. I am showing six or seven

1 different dates where they encountered individuals that had a
2 tie to this particular residence.

3 MR. RASMUSSEN: Back to my question.

4 Is that the date they began conducting surveillance?

5 AGENT MILLER: No, sir. It is going to be June 6.

6 MR. RASMUSSEN: They obtained the address on May 9 and
7 they did not ever -- it is your testimony today they didn't
8 surveil that until June 6, about a month later?

9 AGENT MILLER: Correct.

10 MR. RASMUSSEN: So we are clear, the address which is
11 in the complaint is 11161 [unintelligible] Street?

12 MS. WAGMAN-ROMERO: Your Honor, I just hesitate to put
13 specific addresses on the record. I know --

14 THE COURT: It is in the complaint.

15 MS. WAGMAN-ROMERO: This [unintelligible].

16 THE COURT: I see what you are saying.

17 MS. WAGMAN-ROMERO: Just to preserve the record.

18 THE COURT: Are you making an objection or --

19 MS. WAGMAN-ROMERO: No. I think it is relevant. I
20 want to put on the record that typically we try to protect the
21 addresses.

22 THE COURT: All right, thank you.

23 Go ahead.

24 MR. RASMUSSEN: You can answer.

25 AGENT MILLER: Can you repeat the question, sir?

1 MR. RASMUSSEN: We will get into it.

2 11161 [unintelligible] Street in Socorro?

3 AGENT MILLER: Yes, sir.

4 MR. RASMUSSEN: Let's talk about that.

5 How would you describe the property?

6 AGENT MILLER: I don't know. I have never been there.

7 MR. RASMUSSEN: You have [unintelligible]?

8 AGENT MILLER: No, sir.

9 MR. RASMUSSEN: [unintelligible] it is a large
10 property that has multiple residences?

11 AGENT MILLER: No, sir.

12 MR. RASMUSSEN: The agents didn't tell you that?

13 AGENT MILLER: I did not speak with the agent. One of
14 the reports I viewed, I think, listed an A, some sort of A
15 associated. I didn't know what that meant.

16 MR. RASMUSSEN: It is your testimony now that no
17 surveillance was conducted until June 6 is the specific date,
18 right?

19 AGENT MILLER: Yes, sir.

20 MR. RASMUSSEN: From May 6 when the address was
21 developed until June 6 -- sorry, May 9 until June 6, was there
22 any investigation regarding my client specifically, Mr.
23 Martinez?

24 AGENT MILLER: No, sir.

25 MR. RASMUSSEN: It is fair to say during that month

1 period he was not on the radar as a suspect in the alien
2 smuggling?

3 AGENT MILLER: Correct.

4 MR. RASMUSSEN: Obviously, other people were, right,
5 other individuals?

6 AGENT MILLER: I would say the residence itself was
7 the main target.

8 MR. RASMUSSEN: On June 6 when that property was
9 surveilled, the property sits quite far back from the street,
10 right?

11 AGENT MILLER: I don't know.

12 MR. RASMUSSEN: What is the surveillance referring?

13 AGENT MILLER: The report says at the residence.

14 MR. RASMUSSEN: They entered the residence to conduct
15 surveillance?

16 AGENT MILLER: I don't know.

17 MR. RASMUSSEN: You testified on direct examination
18 that they observed multiple individuals going into the
19 property?

20 AGENT MILLER: Yes, sir.

21 MR. RASMUSSEN: What were the times of those?

22 AGENT MILLER: Approximately 6:30 in the morning.

23 MR. RASMUSSEN: How many different individuals were
24 seen going in?

25 AGENT MILLER: One report stated a vehicle dropped off

1 or the agents observed four people exiting a vehicle and
2 entering the residence.

3 MR. RASMUSSEN: That was the only time?

4 AGENT MILLER: On that day?

5 MR. RASMUSSEN: Correct, on the day the surveillance
6 was being conducted.

7 AGENT MILLER: I would have to check the report.

8 There is a lot of dates and a lot of information. I am not
9 real clear on the chronological order of when vehicles were
10 spotted going in and out.

11 MR. RASMUSSEN: [unintelligible] I want to be clear.
12 It was just one vehicle going in and four individuals getting
13 out?

14 AGENT MILLER: I need to refer to the report again.

15 MR. RASMUSSEN: Judge, is that okay?

16 THE COURT: Go ahead.

17 AGENT MILLER: No, sir, there was a second vehicle, as
18 well.

19 MR. RASMUSSEN: What was the second vehicle?

20 AGENT MILLER: Small gray sedan.

21 MR. RASMUSSEN: How many people were in the second
22 vehicle?

23 AGENT MILLER: The report doesn't indicate. It
24 doesn't say specific.

25 MR. RASMUSSEN: Does it indicate people got out of the

1 vehicle and went into the residence?

2 AGENT MILLER: No. The report states that the people
3 just exited the other vehicle, which was a Jeep.

4 MR. RASMUSSEN: The two vehicles arrived at the same
5 time?

6 AGENT MILLER: Yes.

7 MR. RASMUSSEN: It was one incident where two vehicles
8 pull into this property, correct?

9 AGENT MILLER: Yes.

10 MR. RASMUSSEN: Were any of those individuals
11 identified as my client of getting out of the vehicle?

12 AGENT MILLER: No.

13 MR. RASMUSSEN: Does anything about these individuals
14 indicate they were potentially illegal aliens or undocumented
15 aliens?

16 AGENT MILLER: Yes.

17 MR. RASMUSSEN: What is that?

18 AGENT MILLER: At the time, the agents claimed that
19 they observed four individuals all wearing dark or black
20 clothing, which is commonly used.

21 MR. RASMUSSEN: Commonly used as what?

22 AGENT MILLER: When an illegal alien makes an illegal
23 entry, especially at nighttime, they are more often than not
24 wearing dark clothing.

25 MR. RASMUSSEN: Of course, you will agree there is

1 innocent explanations for wearing dark clothing?

2 AGENT MILLER: I do.

3 MR. RASMUSSEN: You wear dark clothing?

4 AGENT MILLER: I do.

5 MR. RASMUSSEN: Are you wearing dark clothing?

6 AGENT MILLER: Yes, sir.

7 MR. RASMUSSEN: Am I wearing dark clothing?

8 AGENT MILLER: Correct.

9 MR. RASMUSSEN: Anything suspicious about our outfits?

10 AGENT MILLER: No.

11 MR. RASMUSSEN: These individuals wearing dark
12 clothing, were they muddy?

13 AGENT MILLER: The report doesn't say.

14 MR. RASMUSSEN: Were they wet?

15 AGENT MILLER: It doesn't say that.

16 MR. RASMUSSEN: Did they have luggage?

17 AGENT MILLER: No.

18 MR. RASMUSSEN: Again, you are not able to testify
19 where this surveillance was occurring, right?

20 AGENT MILLER: Of the position?

21 MR. RASMUSSEN: Yes.

22 AGENT MILLER: No, I don't.

23 MR. RASMUSSEN: I don't mean [unintelligible]?

24 AGENT MILLER: During the surveillance?

25 MR. RASMUSSEN: Yes.

1 AGENT MILLER: I don't know.

2 MR. RASMUSSEN: Approximately how long did those
3 vehicles stay at the property?

4 AGENT MILLER: I don't know. The record doesn't
5 indicate.

6 MR. RASMUSSEN: Did any of the individuals leave the
7 residence and get into the car?

8 AGENT MILLER: It doesn't say.

9 MR. RASMUSSEN: Eventually, those individuals left?

10 AGENT MILLER: The report doesn't say that either.

11 MR. RASMUSSEN: When they went in to do their own
12 inspection, were the vehicles still on the property?

13 MS. WAGMAN-ROMERO: Objection. Asked and answered.

14 THE COURT: Overruled.

15 AGENT MILLER: I don't know.

16 MR. RASMUSSEN: How long after the vehicles entered
17 the property did the agents approach the residence?

18 AGENT MILLER: The agents initiated their
19 investigation at approximately 10:15 in the morning.

20 MR. RASMUSSEN: Was it during business hours?

21 AGENT MILLER: Yes, sir.

22 MR. RASMUSSEN: 6:30 in the morning is probably not
23 business hours, right?

24 AGENT MILLER: It is subjective. I could agree to
25 that, yes.

1 MR. RASMUSSEN: You testified on direct examination
2 that there was a -- they posed as a delivery driver, right?

3 AGENT MILLER: Yes, sir.

4 MR. RASMUSSEN: You testified they used the word
5 "caja," right?

6 AGENT MILLER: Yes.

7 MR. RASMUSSEN: Caja, in English, means what?

8 AGENT MILLER: Box.

9 MR. RASMUSSEN: They were delivery drivers that had
10 boxes, right?

11 AGENT MILLER: Correct.

12 MR. RASMUSSEN: Is it fair to say that my client was
13 not understanding what these individuals were referencing?

14 AGENT MILLER: Say the question again.

15 MR. RASMUSSEN: My client said he doesn't know who you
16 are, right?

17 AGENT MILLER: Yes.

18 MR. RASMUSSEN: And how many individuals were at the
19 front door?

20 AGENT MILLER: The report says there were two agents
21 posing outside the door and that's it.

22 MR. RASMUSSEN: That would be one person posing as an
23 illegal, right?

24 AGENT MILLER: Correct.

25 MR. RASMUSSEN: Did that person identify himself as an

1 illegal alien?

2 AGENT MILLER: The other agent posing as a driver did
3 the speaking, and he, in fact, informed the Defendant he was
4 there to drop off.

5 MR. RASMUSSEN: This was conducted in Spanish, at
6 least when you are referencing the word "caja?"

7 AGENT MILLER: Correct.

8 MR. RASMUSSEN: Was the entire conversation in
9 Spanish?

10 AGENT MILLER: Yes, sir.

11 MR. RASMUSSEN: They had indicated that
12 [unintelligible] right, the word [unintelligible]?

13 AGENT MILLER: They were asked by the Defendant, in
14 Spanish, who sent you and what is the code.

15 MR. RASMUSSEN: That's when my client said I don't
16 know who you are, right?

17 AGENT MILLER: No. The agents replied a person sent
18 them.

19 MR. RASMUSSEN: Okay.

20 AGENT MILLER: And stated they had -- one for delivery
21 or they were dropping off one.

22 MR. RASMUSSEN: Who was the person?

23 AGENT MILLER: I don't know if it is fictitious or
24 not. I haven't spoken to the agents. They are indicated in
25 the report it was a name spelled [unintelligible].

1 MR. RASMUSSEN: You know what that means in English?

2 AGENT MILLER: Right.

3 MR. RASMUSSEN: For the record, what does it mean?

4 AGENT MILLER: White.

5 MR. RASMUSSEN: The word "stash house" was also used,

6 right?

7 AGENT MILLER: Yes, sir.

8 MR. RASMUSSEN: What was the word in Spanish?

9 AGENT MILLER: Estancia.

10 MR. RASMUSSEN: It means the same in English; is that

11 fair to say?

12 AGENT MILLER: Yes.

13 MR. RASMUSSEN: The delivery driver was to have boxes,

14 and they were going to put them in the stash place.

15 That would all make sense, right?

16 AGENT MILLER: Yes, it could.

17 MR. RASMUSSEN: Just like [unintelligible] clearly

18 could make sense?

19 AGENT MILLER: Correct.

20 MR. RASMUSSEN: At that point, nonetheless, my client

21 said they could enter the residence, right?

22 AGENT MILLER: Sorry, say that again.

23 MR. RASMUSSEN: At that point, my client allowed them

24 to enter the residence, right?

25 AGENT MILLER: No. He turned around to verify. He

1 actually initiated a phone call on his cell phone to verify if
2 they were being truthful, I think, or verify why they were
3 there.

4 MR. RASMUSSEN: Did the agents hear any of that phone
5 call?

6 AGENT MILLER: The report does not say.

7 MR. RASMUSSEN: After that phone call, my client
8 agreed to allow the agents inside the house?

9 AGENT MILLER: No. The agents asked them hey, can I
10 drop this guy off, and, while still on the phone, he said I
11 don't know who you are, but the other agent, posing as an
12 illegal alien, he can stay.

13 MR. RASMUSSEN: Did that agent posing go inside the
14 house?

15 AGENT MILLER: No.

16 MR. RASMUSSEN: Your complaint states the Defendant
17 agreed to let the other agent inside the house, who was still
18 posing as an illegal alien?

19 AGENT MILLER: He did.

20 MR. RASMUSSEN: They are still outside?

21 AGENT MILLER: Yes, sir.

22 MR. RASMUSSEN: At that time, the agents identified
23 themselves as Border Patrol, right?

24 AGENT MILLER: Yes, sir.

25 MR. RASMUSSEN: That's when you indicated in your

1 direct examination that they attempted to effectuate an arrest?

2 AGENT MILLER: Or they attempted to conduct further
3 investigation. I misspoke.

4 MR. RASMUSSEN: But that's what they were doing,
5 right?

6 AGENT MILLER: Yes.

7 MR. RASMUSSEN: What changed?

8 AGENT MILLER: Sorry?

9 MR. RASMUSSEN: What changed?

10 AGENT MILLER: Concerning which parts?

11 MR. RASMUSSEN: How did they effect the arrest?

12 AGENT MILLER: When the Defendant realized they were
13 Border Patrol agents, he attempted to flee the house.

14 MR. RASMUSSEN: The agents were inside the house?

15 AGENT MILLER: No, sir.

16 MR. RASMUSSEN: How did he flee if they couldn't get
17 inside the house?

18 AGENT MILLER: They could see through the door.

19 MR. RASMUSSEN: The door was locked?

20 AGENT MILLER: I don't know.

21 MR. RASMUSSEN: It is your testimony right now they
22 could not go inside the house?

23 AGENT MILLER: Correct.

24 MR. RASMUSSEN: Were they wearing body cams?

25 AGENT MILLER: I don't know.

1 MR. RASMUSSEN: Did you ask them?

2 AGENT MILLER: I have not yet.

3 MR. RASMUSSEN: The policy requires them to wear
4 those, right?

5 AGENT MILLER: No.

6 MR. RASMUSSEN: They have them, and it is at their
7 discretion?

8 AGENT MILLER: Every agent has a body cam.

9 MS. WAGMAN-ROMERO: Objection to the extent we are
10 asking --

11 MR. RASMUSSEN: [unintelligible].

12 MS. WAGMAN-ROMERO: -- on the policy.

13 THE COURT: Sustained.

14 MR. RASMUSSEN: You already stated two individuals at
15 the front door.

16 Where were the other agents around the house?

17 AGENT MILLER: The report indicates there were other
18 agents near the open window towards the rear of the house.

19 MR. RASMUSSEN: How many?

20 AGENT MILLER: Two, I believe.

21 MR. RASMUSSEN: Then, my client crawled through a
22 window?

23 AGENT MILLER: Yes. The agents did say that.

24 MR. RASMUSSEN: Did he get outside?

25 AGENT MILLER: No.

1 MR. RASMUSSEN: He crawled through the window and
2 crawled back in?

3 AGENT MILLER: The report says he attempted to exit
4 the window, and he went back inside.

5 MR. RASMUSSEN: That's when you went to the front
6 door?

7 AGENT MILLER: Yes, sir.

8 MR. RASMUSSEN: The agents asked at that point if they
9 could enter the residence?

10 AGENT MILLER: Yes.

11 MR. RASMUSSEN: He could have told them no?

12 AGENT MILLER: Yes.

13 MR. RASMUSSEN: You indicated in your report the
14 temperature was 105 degrees that day?

15 AGENT MILLER: That's what the report says, yes, sir.

16 MR. RASMUSSEN: Do you have any recollection of the
17 temperature that day?

18 AGENT MILLER: The report states it was over 100, I
19 think.

20 MR. RASMUSSEN: There were other individuals inside
21 the house, right?

22 AGENT MILLER: Yes, sir.

23 MR. RASMUSSEN: When the agents were at the front
24 door, did they see any other individuals?

25 AGENT MILLER: The front door, no.

1 MR. RASMUSSEN: When they were at the back window, did
2 they see any other individuals?

3 AGENT MILLER: Yes, sir. They could see through
4 another window.

5 MR. RASMUSSEN: How many windows are they looking in?

6 AGENT MILLER: I don't know.

7 MR. RASMUSSEN: Let's go to the other window.

8 What could they see through the other window?

9 MS. WAGMAN-ROMERO: Objection, Your Honor, to the
10 extent this is all the same testimony that only goes to a
11 motion to suppress and not to the relevancy of the case, the
12 testimony he consented and they entered.

13 MR. RASMUSSEN: I'm back to before the consent, Your
14 Honor.

15 THE COURT: Look, I am going to overrule the
16 objection. It is relevant. What the agents observed was
17 relevant. The fact it was a different agent at a different
18 window is still relevant to what was observed and which the
19 Agent has testified to on direct. It is overruled.

20 MR. RASMUSSEN: Let's talk about the other window.

21 AGENT MILLER: Okay.

22 MR. RASMUSSEN: What did the agents observe through
23 the other window?

24 AGENT MILLER: The report states the agent observed a
25 female who appeared to them to be in distress.

1 MR. RASMUSSEN: Where was that female?

2 AGENT MILLER: The report states that she was on an
3 inflatable mattress.

4 MR. RASMUSSEN: Where?

5 AGENT MILLER: I don't know the exact position.

6 MR. RASMUSSEN: In a bedroom, the kitchen, the
7 bathroom?

8 AGENT MILLER: I don't know.

9 MR. RASMUSSEN: Agents were looking through two
10 windows.

11 Were they looking through any others?

12 AGENT MILLER: The report does not say any other.

13 MR. RASMUSSEN: This was before they had gone into the
14 house?

15 AGENT MILLER: Yes, sir.

16 MR. RASMUSSEN: The subsequent investigation revealed
17 cell phones, right?

18 AGENT MILLER: Correct.

19 MR. RASMUSSEN: It is your testimony there was a pile
20 of cell phones together?

21 AGENT MILLER: The report states that several cell
22 phones were located together. It doesn't say a pile.

23 MR. RASMUSSEN: How many?

24 AGENT MILLER: Unknown.

25 MR. RASMUSSEN: There were a number of them, but you

1 don't know how many more than one?

2 AGENT MILLER: I don't.

3 MR. RASMUSSEN: There was another location where two
4 other cell phones were located?

5 AGENT MILLER: Correct.

6 MR. RASMUSSEN: You know it was just two other phones?

7 AGENT MILLER: Yes, sir.

8 MR. RASMUSSEN: They interviewed at least one of the
9 other aliens inside of that residence, right?

10 AGENT MILLER: Yes, sir.

11 MR. RASMUSSEN: In that alien's phone was
12 conversations of alien smuggling?

13 AGENT MILLER: Yes, sir.

14 MR. RASMUSSEN: Other than a potential coincidence
15 there was the name of Javier Chavez with my client's middle
16 name, was there anything else in reference to my client being
17 on that phone?

18 AGENT MILLER: Yes.

19 MR. RASMUSSEN: What was that?

20 AGENT MILLER: El 007.

21 MR. RASMUSSEN: What does that mean?

22 AGENT MILLER: The illegal alien identified the
23 Defendant as the person that used that moniker.

24 MR. RASMUSSEN: Other than the Defendant saying he
25 used my phone, was there any evidence inside of the phone

1 actually related to my client?

2 AGENT MILLER: The report indicates that the messages
3 referred to the sender on the phone as El 007.

4 MR. RASMUSSEN: Right. You don't know what El 007
5 means?

6 AGENT MILLER: No, sir.

7 MR. RASMUSSEN: You are just saying this other
8 individual -- who was there illegally, right?

9 AGENT MILLER: Yes, sir.

10 MR. RASMUSSEN: Who was breaking the law, right?

11 AGENT MILLER: Yes, sir.

12 MR. RASMUSSEN: Said somebody else used my phone,
13 right?

14 AGENT MILLER: Yes, sir.

15 MR. RASMUSSEN: But there is nothing else to
16 corroborate that, right?

17 AGENT MILLER: Subsequent other investigation, yes.

18 MR. RASMUSSEN: What?

19 AGENT MILLER: Other than his admission, his
20 statements, his written words?

21 MR. RASMUSSEN: Yes.

22 AGENT MILLER: Yes.

23 MR. RASMUSSEN: [Unintelligible]?

24 AGENT MILLER: Nothing other than that.

25 MR. RASMUSSEN: Nothing other than him saying that?

1 AGENT MILLER: Correct.

2 MR. RASMUSSEN: Would you agree with me someone here
3 illegally has every incentive not to get in any more trouble,
4 right?

5 AGENT MILLER: Yes.

6 MR. RASMUSSEN: Would you agree with me it is rather
7 suspicious there is this conversations on this other illegal's
8 phone, and he is saying it wasn't me, it was somebody else,
9 right?

10 AGENT MILLER: I'm unclear on that question.

11 MR. RASMUSSEN: You testified that my client used a
12 cell phone, right?

13 AGENT MILLER: Correct.

14 MR. RASMUSSEN: It is not the same cell phone we are
15 talking about, right?

16 AGENT MILLER: It is the illegal alien's cell phone.

17 MR. RASMUSSEN: Somebody [unintelligible] sticker?

18 AGENT MILLER: It was the cell phone the agents had
19 observed him at the front door, the phone he was using.

20 MR. RASMUSSEN: My client had access to a cell phone?

21 AGENT MILLER: Yes.

22 MR. RASMUSSEN: At least he was using the phone or
23 pretending to use the phone?

24 AGENT MILLER: Correct.

25 MR. RASMUSSEN: They saw him with the phone, right?

1 It wasn't the phone that this evidence is in, right?

2 AGENT MILLER: The agents saw?

3 MR. RASMUSSEN: Yeah.

4 AGENT MILLER: No, it was not.

5 MR. RASMUSSEN: The only evidence related to alien
6 smuggling is in that phone that was [unintelligible]?

7 AGENT MILLER: Correct.

8 MR. RASMUSSEN: There is nothing in these other phones
9 that my client had that he was actually using that the agent
10 saw him using that was related to alien smuggling, right?

11 AGENT MILLER: Say that question again.

12 MR. RASMUSSEN: You searched the two phones that you
13 found at least one of them my client was in possession of?

14 AGENT MILLER: No. We have not searched the cell
15 phone of the Defendant.

16 MR. RASMUSSEN: At this time, it is fair to say there
17 is nothing inside the phone that is related to alien smuggling?

18 AGENT MILLER: Inside the Defendant's phone?

19 MR. RASMUSSEN: Correct.

20 AGENT MILLER: Yes, that is correct.

21 MR. RASMUSSEN: The other case that you referenced was
22 the evading arrest.

23 My client was arrested, right?

24 AGENT MILLER: Yes, sir.

25 MR. RASMUSSEN: He went to court and was released on

1 bond, right?

2 AGENT MILLER: I think so. I don't know for sure.

3 MR. RASMUSSEN: He is not in custody?

4 AGENT MILLER: He is not in custody, so I assume yes.

5 MR. RASMUSSEN: To your knowledge, there is no open
6 warrant for that case, right?

7 AGENT MILLER: No, not to my knowledge.

8 MR. RASMUSSEN: He hasn't missed any court dates for
9 that?

10 AGENT MILLER: Not to my knowledge, no.

11 MR. RASMUSSEN: Other than that one illegal alien
12 stating my client was the coyote and having alien smuggling
13 conversations in his own phone, do you have any other evidence
14 that my client was related to this alien smuggling scheme?

15 AGENT MILLER: The illegal alien [unintelligible] find
16 the Defendant in a photographic lineup and stating in a post
17 Miranda statement that the Defendant was, in fact, the
18 caretaker of the house. No, I didn't have anything else.

19 MR. RASMUSSEN: So, he is the only person
20 [unintelligible]?

21 AGENT MILLER: Not me personally. The agents ID'd
22 him.

23 MR. RASMUSSEN: [unintelligible]?

24 AGENT MILLER: I don't know.

25 MR. RASMUSSEN: Thank you, Judge. Pass the witness.

1 THE COURT: Any other questions?

2 MS. WAGMAN-ROMERO: A few follow-ups to clarify some
3 things, Your Honor.

4 THE COURT: Sure.

5 MS. WAGMAN-ROMERO: Hello again, Agent.

6 Mr. Rasmussen asked you a number of questions about
7 delivery drivers and boxes. I wanted to clarify some things
8 related to what he asked you. In your complaint, it says he
9 posed as a delivery driver, and you also testified to that.

10 When you used the phrase "delivery driver," are you saying
11 he was wearing a UPS outfit or FedEx outfit? What do you mean
12 by delivery driver?

13 AGENT MILLER: In the literal sense, he was delivering
14 something. In this case, it would have been an illegal alien.

15 MS. WAGMAN-ROMERO: When he approached and discussed a
16 caja that Mr. Rasmussen asked you about, did he, in fact, have
17 a box with him in the sort that Amazon would deliver or
18 something to that effect?

19 AGENT MILLER: Not to my knowledge, no.

20 MS. WAGMAN-ROMERO: When he approached, he had another
21 undercover agent with him?

22 AGENT MILLER: Yes, ma'am.

23 MS. WAGMAN-ROMERO: No objects to be delivered,
24 correct?

25 AGENT MILLER: Not to my knowledge, no.

1 MS. WAGMAN-ROMERO: The alien who was questioned about
2 the phone, if you know it, do you know where he was located
3 inside the house?

4 AGENT MILLER: Specific location, I don't know.

5 MS. WAGMAN-ROMERO: Do you know whether or not that
6 individual was found in close proximity with other aliens found
7 inside the house?

8 AGENT MILLER: Yes, ma'am. He claimed he was with the
9 other males inside the house.

10 MS. WAGMAN-ROMERO: In a room?

11 AGENT MILLER: Yes, ma'am.

12 MS. WAGMAN-ROMERO: Mr. Rasmussen asked you, and I
13 know he was going through it very quickly. At least what I
14 heard, nothing inside the Defendant's phone.

15 At this point, is it fair to say there was nothing inside
16 the Defendant's phone that relates to alien smuggling? Law
17 enforcement has not looked in that phone yet, correct?

18 AGENT MILLER: That is correct.

19 MS. WAGMAN-ROMERO: You don't know?

20 AGENT MILLER: We do not know.

21 MS. WAGMAN-ROMERO: Mr. Rasmussen also asked you
22 whether or not the Defendant had missed any court dates in his
23 immigration case.

24 You replied not to my knowledge; is that correct?

25 AGENT MILLER: Correct.

1 MS. WAGMAN-ROMERO: Do you know whether or not there
2 have been any court dates in that case?

3 AGENT MILLER: No, I don't.

4 MS. WAGMAN-ROMERO: May I have a moment, Your Honor?

5 THE COURT: You may.

6 MS. WAGMAN-ROMERO: That's all, Your Honor. Thank
7 you.

8 MR. RASMUSSEN: No further questions.

9 THE COURT: Before you step down, a couple of very
10 quick questions that relate to the detention issue.

11 First, in the paperwork you have reviewed with respect to
12 his asylum claim, not the asylum claim but the fact of an
13 asylum hearing date he has pending, in your review of that
14 paperwork, do you know when the Defendant entered the United
15 States, when and where?

16 AGENT MILLER: I don't remember.

17 THE COURT: The other question I have relates to
18 something that you testified to on cross-examination by Mr.
19 Rasmussen.

20 You indicated that one of the agents that was looking
21 through the window saw a woman in distress; is that correct?

22 AGENT MILLER: The agents claimed she appeared to them
23 to be in distress.

24 THE COURT: My only question is, did this individual
25 require any medical attention afterwards that you are aware of?

1 AGENT MILLER: I don't know.

2 THE COURT: You don't know whether an ambulance was
3 sent to the scene or anything like that?

4 AGENT MILLER: No, sir, I don't.

5 THE COURT: Very well.

6 Anything else, Counsel?

7 MR. RASMUSSEN: No, Your Honor.

8 MS. WAGMAN-ROMERO: No, Your Honor.

9 THE COURT: You can step down, sir.

10 Any other witnesses or evidence?

11 MS. WAGMAN-ROMERO: No other witnesses, Your Honor.

12 We ask you take judicial notice of the Pretrial Services
13 report.

14 THE COURT: Very well.

15 Any witnesses or evidence?

16 MR. RASMUSSEN: No, Your Honor.

17 THE COURT: Let me hear your argument briefly, please.

18 MS. WAGMAN-ROMERO: Absolutely, Your Honor.

19 Your Honor, I will address probable cause first. You have
20 heard testimony that, first, the Defendant in the courtroom is
21 the Defendant in the criminal complaint and that the alleged
22 crime took place in the Western District of Texas.

23 Mr. Martinez is charged with a Conspiracy to Harbor Aliens.
24 You have heard testimony that 17 aliens, who were confirmed to
25 be illegally present in the United States, were found in the

1 house where Mr. Martinez was also found. There are aliens
2 involved in this offense.

3 In terms of harboring, you have heard testimony, and we
4 think this part is particularly important here, that when
5 agents approached the door, it was Mr. Martinez who was the
6 person who, I guess, maybe not opened the door because it was
7 the screen thing, I assume there was some door, who was at the
8 door.

9 They spoke to Mr. Martinez about a caja. They did not have
10 an actual box. They had a person with them. They spoke to him
11 about dropping off and that the Defendant asked what is the
12 code. The Defendant allowed, or by his oral indications,
13 allowed the illegal alien or the undercover Border Patrol agent
14 to stay. When the agents revealed themselves to be Border
15 Patrol agents, he attempted to flee.

16 That is all circumstantial evidence he is in charge of this
17 house, and he is the person approaching the door, he is
18 fleeing, he is making a phone call to see who these people are
19 at the door, he is the one who is [unintelligible] on the power
20 here.

21 THE COURT: Get to the part of the evidence or give me
22 your view of the evidence that shows that he had an agreement
23 with some unknown persons to conceal, harbor and shield from
24 detection.

25 What is the agreement part?

1 MS. WAGMAN-ROMERO: I guess [unintelligible]
2 intertwined.

3 THE COURT: Sure.

4 MS. WAGMAN-ROMERO: There is the alien the agents
5 spoke with and he -- sorry, Your Honor, I am trying to think
6 how to parse that out.

7 For one, he had the phone call to verify with someone else.
8 That's another person that is a conspiracy, who these people
9 were at his door. That's an indication there were others
10 involved in this conspiracy.

11 The surveillance shots showed individuals being dropped
12 off. You heard testimony that none of those cars were
13 registered in the Defendant's name. That indicates there is
14 other people involved in this conspiracy.

15 You heard testimony that there was a phone that one of the
16 illegal aliens staying at the house said that the Defendant
17 used to have communications with other people about alien
18 smuggling. That's an indication there were other people in
19 this conspiracy.

20 Beyond that, I assume that Mr. Rasmussen will argue that
21 maybe it was that illegal alien who was really the alien
22 smuggler who was really the owner of the stash house.

23 However, even if you assume, and we are not saying this is
24 our argument, but assuming you take Mr. Rasmussen's assumed
25 argument, a lot of assuming, this other alien was the one

1 sending those alien smuggling messages, that's another person
2 too. That also goes to the idea there is a conspiracy.

3 I know it was a little confusing, sorry. That alien
4 referred to the Defendant as a coyote. We believe all of that,
5 just the circumstances, shows that this Defendant is not the
6 only one bringing 17 aliens over here and holding them in the
7 stash house. We believe that goes to the conspiracy with
8 another.

9 We also believe, substantively, he is harboring these
10 individuals. You heard testimony that he told them to stay
11 quiet. This other alien was found in the room in which
12 purportedly the Defendant told him to stay with the other
13 aliens. The Defendant is the one answering the door, the
14 Defendant was the one asking for the code, the Defendant is the
15 one calling other people.

16 We believe that there is clear probable cause here that he
17 is in a conspiracy to harbor aliens, Your Honor.

18 THE COURT: Let me ask you this, this is really
19 neither here nor there.

20 Do you think that -- this has been charged as a conspiracy
21 to harbor. Do you think these facts present a clear case of
22 the substantive offense?

23 MS. WAGMAN-ROMERO: I would argue that there is
24 probable cause for the substantive offense.

25 THE COURT: Which is not charged?

1 MS. WAGMAN-ROMERO: I don't see that charge in the
2 complaint, Your Honor.

3 THE COURT: But you have gone through what you think
4 is the evidence of the conspiracy, circumstantial evidence,
5 that points to an agreement between the Defendant and others
6 given that there is some evidence, in your opinion, of him
7 being in charge quote/unquote of this house, stash house.

8 There is some indicia of agreements with other people to
9 engage in that particular substantive criminal conduct, right?

10 MS. WAGMAN-ROMERO: Correct, Your Honor.

11 THE COURT: Thank you.

12 MS. WAGMAN-ROMERO: Thank you.

13 THE COURT: Mr. Rasmussen?

14 MR. RASMUSSEN: Thank you, Judge.

15 The problem with the conspiracy is this. The agent
16 testified that when they investigated this residence for over a
17 month, and during that time there was absolutely no evidence
18 that my client was part of any sort of conspiracy, that he was
19 part of this residence, he was part of any sort of alien
20 smuggling. He said, during that time, my client's name and who
21 he was had never came up.

22 THE COURT: By the way, I agree with you completely on
23 that. Address the issues that point to the appearance of
24 collaboration with others with respect to the substantive
25 offenses that appear to have been alleged by the agents.

1 MR. RASMUSSEN: Yes, Judge.

2 My client answered the door, or was at the door. That
3 alone is not indicative of anything. There is no evidence he
4 was on a lease agreement, and no evidence he was the owner of
5 the house, no evidence of anything.

6 As far as his relation to the house, I would say answering
7 the door is an innocent explanation. Again, they are talking
8 about boxes. Sure, we can jump to that meaning something
9 illegal. That's the problem. We can't assume here that my
10 client knew that they wanted to conduct an illegal transaction.
11 There is nothing that indicates my client was part of that, was
12 part of the conspiracy.

13 The only evidence, Judge, is another individual, who was
14 illegally in the United States, who on his own phone has
15 correspondence with [unintelligible]. It does not relate back
16 to my client. There is no evidence that my client made any
17 confessions about this. There is no evidence in my client's
18 phone that he was part of this conspiracy.

19 I think, Judge, based on the totality of the circumstances
20 at this point that there is just not probable cause that my
21 client was part of this conspiracy, and we ask for you to find
22 no probable cause, Judge.

23 THE COURT: Thank you very much.

24 With respect to probable cause, the evidence is
25 circumstantial on the conspiracy part. That's always -- you go

1 back to the criminal law 101 idea of what is a conspiracy, what
2 is the meeting of the minds. The evidence is circumstantial
3 here and, only then, barely so.

4 There is enough under the probable cause standard, which is
5 low, for the Court to find there is some indicators he was
6 collaborating with others with respect to harboring
7 individuals.

8 I will note, which is just for what it is worth, it seems
9 to me this is -- had this case been charged as a concealing,
10 harboring and shielding from detection substantive case, it is
11 a much clearer easily met burden for the Government.

12 You know, that's not the Court's choice. Of course, it is
13 within the purview solely of the Government, the executive
14 branch. They still meet their burden.

15 Did the parties wish to address the issue of detention very
16 briefly?

17 MS. WAGMAN-ROMERO: Yes, Your Honor.

18 We would like to [unintelligible] simply put, we do think
19 this individual is a flight risk. We are not necessarily
20 saying he is going to flee to another country or be deported.

21 It came out he has a pending hearing. He is here. He is
22 from Venezuela. He can also be removed to Mexico, but we do
23 think he has incentives and would fail to appear for court,
24 which is what the standard of the Bail Reform Act is.

25 He has a prior evading arrest where that charge is pending,

1 but there was another alien in the vehicle, and he rolled the
2 vehicle. He was fleeing arrest there. He also attempted to
3 flee here through a window in the residence.

4 In terms of other factors that relate to his impact of
5 danger to the community and [unintelligible] as well, he
6 continues to make very poor choices. He has these two pending
7 charges, the larceny and evading arrest.

8 The Pretrial Services report indicates he has four active
9 warrants from the municipal court already, and, yet, he is
10 arrested again in these allegations. We do not think he has
11 any incentives to appear in court. He is the kind of person,
12 it seems to us, that makes quite poor choices about criminal
13 conduct and his engagement with the judicial system.

14 We respectfully ask you to detain him.

15 THE COURT: Thank you.

16 Mr. Rasmussen?

17 MR. RASMUSSEN: Judge, briefly.

18 We ask you consider releasing him. We will not ask you to
19 consider releasing him to a location or residence. We ask that
20 you consider releasing him to Dismas Charities. It would give
21 you any sort of added comfort he will have to follow all their
22 rules and regulations. Dismas does a great job of keeping
23 track of people and making sure they follow all their own rules
24 and regulations.

25 The Government is right, my client is not fleeing back to

1 Venezuela. Quite the opposite, if he goes back there, he is
2 worried about his life. That's why he is here applying for
3 asylum. He has every incentive to stay in the United States
4 and every incentive to follow-up with the immigration stuff.

5 What is most important about what the Agent testified, not
6 counting probable cause, he says specifically, Judge, in a case
7 where an individual has an immigration hearing that they will
8 run the date ahead of the criminal proceedings. This is why it
9 is important, Judge. If you consider releasing him to Dismas
10 Charities, he can address the immigration hearing. If he is
11 forced to stay in custody, he can't address it, and the two
12 will be tacked [unintelligible] each other forever.

13 I would ask that you consider releasing him at Dismas. You
14 can give him any added conditions. There is no indication he
15 missed any court hearings, and he wants to continue with those
16 court hearings because he doesn't want to screw up his chances
17 for the opportunity to remain in the United States.

18 Based on the lack of any criminal convictions, we know he
19 has been here at least eight months, we ask you put him on the
20 list for Dismas Charities, and taking into account by your own
21 ruling that although probable cause was found, you did state it
22 was not the strongest case.

23 If he is released out of custody, it gives us a better
24 opportunity, as Defense, to meet with him, prepare for this
25 case, conduct investigations and such.

1 More importantly, if he is released, he can proceed with
2 the immigration hearing.

3 Thank you.

4 THE COURT: Thank you very much.

5 I will note that, I think, the case is United States versus
6 Jackson, a Fifth Circuit case from the 1980s, which does
7 mention strength of the case while a factor in a detention
8 hearing, without a doubt, it is not necessarily the strongest
9 factor.

10 I am going to note in this case this Defendant appears to
11 have been here at least eight months, and in that time he has
12 picked up a petty larceny. Who knows what that was. It could
13 have been a very minor shoplifting thing, which is what it
14 sounds like, up in New York.

15 This evading arrest case in Hudspeth County only a couple
16 of months ago is very problematic. He also managed to be
17 driving somehow, I am assuming without a license, where he is
18 picked up for active warrants. It could be jaywalking
19 warrants, I don't know.

20 Then, he appears to have attempted to flee here when
21 confronted by agents at the incident in question. That's
22 keeping a little bit busy in terms of contact with law
23 enforcement in a country that you are asking asylum from.

24 I am going to find that he does pose a risk of flight, and
25 I am going to grant the Government's motion to detain.

1 Anything else, Mr. Rasmussen?

2 MR. RASMUSSEN: No, Your Honor. Thank you for
3 [unintelligible] on this hearing. I appreciate it.

4 THE COURT: Fine.

5 Anything else, Ms. Wagman?

6 MS. WAGMAN-ROMERO: No, Your Honor.

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CERTIFICATION

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3 I certify that the foregoing is a correct transcript from
4 the record of proceedings in the above-entitled matter. I
5 further certify that the transcript fees and format comply with
6 those prescribed by the Court and the Judicial Conference of
7 the United States.

8

9 Date: October 3, 2024

10

/s/ Walter A. Chiriboga, Jr.

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Walter A. Chiriboga, Jr.

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